

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Theresa Moran,	)	No. CV 15-09407-SJO(AS)
	)	
Plaintiff,	)	<b>MEMORANDUM OPINION AND</b>
v.	)	
	)	<b>ORDER OF REMAND</b>
CAROLYN W. COLVIN,	)	
Acting Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	
	)	

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Pursuant to Sentence 4 of 42 U.S.C. § 405(g), IT IS HEREBY ORDERED that this matter is remanded for further administrative action consistent with this Opinion.

**I. PROCEEDINGS**

On December 4, 2015, Plaintiff filed a Complaint seeking review of the Commissioner's denial of Plaintiff's application for a period of disability and disability insurance benefits. (Docket Entry No

1) On April 15, 2016, Defendant filed an Answer to the Complaint, and the Certified Administrative Record ("A.R.") (Docket Entry Nos. 12-13). The parties have consented to proceed before a United States Magistrate Judge. (Docket Entry Nos. 9-10). The parties filed a Joint Stipulation ("Joint Stip.") on July 27, 2016, setting forth their respective positions on Plaintiff's claims. (Docket Entry No. 16).

## II. BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION

Plaintiff, formerly employed as a clerk in a Wonder and Weber's Bread bakery outlet (A.R. 56), asserts disability beginning March 1, 2009, based on the alleged physical impairments of degenerative disc disease, osteoporosis, fibromyalgia, and carpal tunnel syndrome ("CTS"). (A.R. 53-55; Joint Stip. 5). On March 19, 2014, Administrative Law Judge ("ALJ"), Sally Reason, examined the record and heard testimony from Plaintiff and vocational expert ("VE"), Kelly Bartlett. (A.R. 56-78). On May 19, 2014, the ALJ denied Plaintiff benefits in a written decision. (A.R. 18-31).

The ALJ applied the five-step process in evaluating Plaintiff's case. (A.R. at 18-27). At step one, the ALJ determined that Plaintiff had not engaged in substantial gainful activity after the alleged onset date of March 1, 2009 and that Plaintiff's date last insured (DLI) was December 31, 2009. (A.R. 21-22). At step two, the ALJ found that Plaintiff has the severe impairments of degenerative disc disease of the lumbar spine, osteoporosis, and

1 "possibly fibromyalgia." (A.R. 23). The ALJ also found that  
2 Plaintiff did not have any upper extremity limitations prior to  
3 Plaintiff's DLI. (A.R. 22-23). In making this determination, the  
4 ALJ found no "objective confirmation evidence of any related  
5 function limitations" of Plaintiff's upper extremities. (A.R. 23).  
6 The ALJ noted that although there is evidence of an  
7 electrodiagnostic study in 2009, suggesting bilateral CTS, Plaintiff  
8 also had negative Tinel's and Phalen's tests bilaterally conducted  
9 around the same time and did not allege CTS as a disabling  
10 condition. (A.R. 23). At step three, the ALJ found that  
11 Plaintiff's impairments did not meet or equal a listing found in 20  
12 C.F.R. Part 404, Subpart P, Appendix 1. (A.R. 23).

13  
14 Before proceeding to step four, the ALJ found that Plaintiff  
15 had the residual functional capacity ("RFC")<sup>1</sup> to perform light work  
16 in that she can lift and carry 20 pounds occasionally and 10 pounds  
17 frequently; sit for 6 hours in an 8-hour workday; and stand and walk  
18 6 hours total in an 8-hour workday. (A.R. 24, 28).

19  
20 In making this finding, The ALJ rejected favorable opinion  
21 evidence from Plaintiff's treating physician, Dr. Yoon, which  
22 addressed Plaintiff's upper extremity limitations. (A.R. 25-26). A  
23 RFC questionnaire that Dr. Yoon filled out in March 2012 asserts  
24 that Plaintiff is limited to lifting 5 pounds with marked  
25 limitations in manipulation or use of the upper extremities. (A.R.

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26 <sup>1</sup> A Residual Functional Capacity is what a claimant can still  
27 do despite existing exertional and nonexertional limitations. See  
28 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1).

1 438-39). The ALJ rejected Dr. Yoon's March 2012 questionnaire and  
2 April 2013 opinion letter, which stated similar findings, to the  
3 extent it assessed Plaintiff's disabled status through December 31,  
4 2009, finding that because Dr. Yoon had not examined Plaintiff until  
5 November 23, 2009, "neither this examination nor his or other source  
6 evidence surrounding the period ending December 31, 2009, is  
7 particularly impressive."<sup>2</sup> (A.R. 26).

8  
9 At step four, the ALJ determined that Plaintiff was not able  
10 to perform her past relevant work because she was limited to light  
11 work. (A.R. 26). At step five, the ALJ found Plaintiff was able  
12 to perform jobs consistent with her age, education, and medical  
13 limitations existing in significant numbers in the national economy.  
14 (A.R. 26-27). In particular, Plaintiff could perform the  
15 requirements of retail cashier (Dictionary of Occupational Titles  
16 ("DOT") No. 211.462-014) and telephone solicitor (DOT 299.357.014),  
17 with transferrable skills in customer service, giving information,  
18 and retail sales. (A.R. 27, 233). Accordingly, the ALJ found that  
19 Plaintiff was not disabled.

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21 Plaintiff requested that the Appeals Council review the ALJ's  
22 decision. (A.R. 1). The request was denied on May 19, 2014. (A.R.  
23 1-5). The ALJ's decision then became the final decision of the  
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25 <sup>2</sup> The "source evidence" the ALJ referred to is likely the  
26 Tinel's and Phalen's tests and electrodiagnostic tests conducted by  
27 Plaintiff's previous physician, Dr. Huang, on August 31 and  
28 September 14, 2009, respectively. (A.R. 1192, 1205-07).

Commissioner, allowing this Court to review the decision. See 42 U.S.C. §§ 405(g), 1383(c).

### III. STANDARD OF REVIEW

This court reviews the Administration's decision to determine if the decision is free of legal error and supported by substantial evidence. See Brewes v. Commissioner of Social Sec. Admin., 682 F.3d 1157, 1161 (9th Cir. 2012). "Substantial evidence" is more than a mere scintilla, but less than a preponderance. Garrison v. Colvin, 759 F.3d 995, 1009 (9th Cir. 2014). To determine whether substantial evidence supports a finding, "a court must consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion." Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001). As a result, "[i]f the evidence can reasonably support either affirming or reversing the ALJ's conclusion, [a court] may not substitute [its] judgment for that of the ALJ." Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006).

### IV. PLAINTIFF'S CONTENTION

Plaintiff alleges that, in assessing her residual functional capacity, the ALJ failed to properly consider the medical evidence contained in the opinions of her treating physician and the objective findings of other treating sources. (Joint Stip. 4-17, 12-13).

## V. DISCUSSION

After reviewing the record, the Court finds that the ALJ failed to make an RFC determination that accounted for the combined effects of all of Plaintiff's impairments when the ALJ rejected Dr. Yoon's opinion on Plaintiff's upper extremity functional limitations. The Court therefore remands for further consideration.

### A. The ALJ Erred in Assessing the Opinion of Plaintiff's treating Physician.

Although a treating physician's opinion is generally afforded the greatest weight in disability cases, it is not binding on an ALJ with respect to the existence of an impairment or the ultimate determination of disability. Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004); Magallanes v. Bowen, 812 F.2d 747, 751 (9th Cir. 1989). The weight given to a treating physician's opinion depends on whether it is supported by sufficient medical data and is consistent with other evidence in the record. 20 C.F.R. § 416.927(b)-(d). Controlling weight must be given to medical opinions of treating physicians where the opinion is well-supported and not inconsistent with the other substantial evidence in the record. Palomares v. Astrue, 887 F. Supp. 2d 906, 914 (N.D. Cal. 2012); Social Security Ruling ("SSR") 96-2p. To reject the uncontradicted opinion of a treating physician, the ALJ must give "clear and convincing reasons that are supported by substantial evidence." Ghanim v. Colvin, 763 F.3d 1154, 1160-61 (9th Cir. 2014)

1 citing Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir.2005);  
2 Thomas v. Barnhart, 278 F.3d 947 (9th Cir. 2002). If the treating  
3 doctor's opinion is contradicted by another doctor, the ALJ must  
4 provide "specific and legitimate reasons" for rejecting the treating  
5 physician's opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir.  
6 2007); Reddick v. Chater, 157 F.3d 715, 725 (9th Cir. 1998).

7  
8 Plaintiff asserts that the ALJ did not provide clear and  
9 convincing reasons for rejecting the opinion of Dr. Yoon,  
10 Plaintiff's treating physician. (Joint Stip. 5-7, 12-13).  
11 Plaintiff contends that Dr. Yoon had a "solid basis" for diagnosing  
12 Plaintiff with CTS during their first visit. (A.R. 6). Dr. Yoon  
13 had the opportunity to examine Plaintiff on November 23, 2009, and  
14 in making his diagnosis, relied on objective evidence – the positive  
15 electrodiagnostic test conducted by Dr. Huang in September 2009.  
16 (Joint Stip. 13). In response to the ALJ's assertion that Dr. Yoon  
17 did not have a "longitudinal picture" of Plaintiff's functional  
18 limitations by November 2009, Plaintiff claims that Dr. Yoon had  
19 "personal knowledge" of Plaintiff's conditions during her November  
20 2009 visit, which was sufficient time to form a medical opinion  
21 regarding Plaintiff's upper extremity limitations. (Joint stip. 7).

22  
23 Defendant contends that the ALJ properly rejected Dr. Yoon's  
24 opinion because (1) Dr. Yoon's notes provide little in the way of  
25 significant findings or a "detailed longitudinal picture of  
26 Plaintiff's condition prior to her DLI;" (2) Dr. Yoon referred to  
27 many conditions, including some that were in remission,  
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1 demonstrating a lack of knowledge of Plaintiff's actual health; (3)  
2 Dr. Yoon's apparent diagnosis was not the result of objective  
3 findings because it was listed in the chief complaint (i.e. "C.C.")  
4 section of his notes, which indicates that Plaintiff self-reported  
5 the condition as opposed to it being the result of an examination;  
6 (4) Dr. Yoon's diagnosis further lacks objective support because it  
7 conflicts with the negative Tinel's and Phalen's tests and lacks  
8 objective confirmation evidence of any related functional  
9 limitations; and (5) the only objective evidence of upper extremity  
10 limitations occurred after the DLI. (Joint Stip. 8-12).

11  
12 The ALJ's assertion that "Dr. Yoon did not examine the claimant  
13 until November 2009" and that his examination was "not particularly  
14 impressive" is not a clear and convincing reason to reject Dr.  
15 Yoon's opinion, especially when viewed in the context of Dr. Huang's  
16 earlier CTS diagnosis and treatment. (A.R. 26). While limited  
17 observation of a claimant is a good reason to give less weight to a  
18 physician's opinion, it is not a reason to discredit the opinion  
19 altogether. See Lester v. Chater, 81 F.3d 821, 832 (9th Cir. 1995),  
20 as amended (Apr. 9, 1996). Dr. Yoon examined Plaintiff for CTS  
21 during her November 2009 visit and concluded in his March 2012  
22 assessment and April 2013 letter, that Plaintiff had upper extremity  
23 limitations "probably from the time I first started to see her on  
24 11/23/09" and was thereby precluded from lifting and carrying up to  
25 five pounds, carrying five to ten pounds, and "grasping, turning,  
26 and twisting objects, using her hands for fine manipulations, and  
27 using her arms for reaching." (A.R. 438-441, 736, 865).



1        Additionally, Dr. Yoon's opinion is consistent with the  
2 diagnosis and treatment carried out by Dr. Huang, Plaintiff's  
3 previous treating physician. The ALJ ignores Dr. Huang's diagnosis,  
4 despite its probative value. Godbey v. Apfel, 238 F.3d 803 (7th  
5 Cir. 2000) (evidence that does not support the decision may not be  
6 ignored, especially when the evidence is probative). Dr. Huang  
7 diagnosed Plaintiff with bilateral CTS on September 14, 2009, after  
8 completing the aforementioned electrodiagnostic test. (A.R. 1205).  
9 Prior to the diagnosis, Dr. Huang did conduct a negative Phalen's  
10 and Tinel's test on August 31, 2009, (A.R. 1192), but still  
11 diagnosed Plaintiff with bilateral CTS based on objective test  
12 results, which constitute substantial evidence. Roberts v. Shalala,  
13 66 F.3d 179, 184 (9th Cir. 1995), as amended (Oct. 23,  
14 1995)(objective testing in support of diagnosis meets substantial  
15 evidence standard). Plaintiff suffered from hand numbness and pain,  
16 giving a 5 out of 10 pain-score. (A.R. 1205, 1208). Dr. Huang  
17 prescribed Plaintiff Vicodin to manage the pain, issued bilateral  
18 wrist splints, and conducted a follow-up visit for the CTS on  
19 October 14, 2009. (A.R. 1208, 1213, 1231). In light of this  
20 evidence, the ALJ improperly relied on the negative Phalen's and  
21 Tinel's tests to reject Dr. Yoon's opinion regarding Plaintiff's  
22 upper extremity limitations.

23  
24        Defendant claims that Dr. Yoon's diagnosis is not credible  
25 because the CTS diagnosis was listed in the chief complaint section  
26 of his Doctor's notes, which may indicate that Plaintiff self-  
27 reported this diagnosis during the first visit, thus, limiting its  
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1 objective weight. (Joint Stip. 11). Yet, Plaintiff asserts that  
2 Dr. Yoon based the CTS diagnosis on the September 2009  
3 electrodiagnostic test and examination. (Joint Stip. 12-13). The  
4 record is unclear on this matter in part because Dr. Yoon's records  
5 failed to include the method of examination and the source of the  
6 CTS diagnosis.<sup>3</sup> (See A.R. 865). Greater clarification may be  
7 useful to determine whether Dr. Yoon's opinions were informed by  
8 objective evidence during the November 2009 visit. Even if Dr.  
9 Yoon's diagnosis was based on subjective factors, the ALJ was  
10 required to give his opinion some weight. Lester, 81 F.3d at 832-33  
11 ("Commissioner is required to give weight not only to the treating  
12 physician's clinical findings and interpretation of test results,  
13 but also to his subjective judgments.").

14  
15 Moreover, the ALJ's finding that "other source evidence"  
16 regarding upper extremity limitations was "not particularly  
17 impressive" is not supported by substantial evidence. As discussed,  
18 Dr. Huang made a final diagnosis based on objective evidence and  
19 carried out a treatment plan. (A.R. 11921, 1205, 1208-1213). The  
20 ALJ failed to provide any justification for rejecting this or  
21 explaining why Dr. Huang's diagnosis did not support Dr. Yoon's  
22 opinions. (A.R. 26). Lester, 81 F.3d at 832. (A similarity of  
23 conclusions between doctors provides reason to *credit* the opinions  
24 of both doctors as opposed to reject).

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27 <sup>3</sup> Dr. Yoon's handwriting is mostly illegible regarding the  
28 CTS examination itself. (See A.R. 865).

1 The ALJ also eludes that because there is no objective evidence  
2 of Plaintiff's related functional limitations, Dr. Yoon's opinion  
3 should not be considered in the RFC assessment. (A.R. 23, 26).  
4 However, there is evidence that Dr. Huang prescribed bilateral  
5 splints and pain medications, which demonstrates some objective  
6 limitations regarding Plaintiff's ability to use her hands. (A.R.  
7 1205-1213). Furthermore, while CTS alone may not have severely  
8 limited Plaintiff's upper extremity functions, "when considered with  
9 limitations or restrictions due to other impairments," such as  
10 degenerative disc disease and possible fibromyalgia, a CTS diagnosis  
11 may "be critical to the outcome of a claim." Carmickle v. Comm'r,  
12 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008). Dr. Yoon  
13 opined that Plaintiff's pain in her joints and fatigue preclude  
14 Plaintiff from using her upper extremities. (A.R. 736). The ALJ  
15 erred in not considering this this limitation in her assessment of  
16 Plaintiff's RFC.

17  
18 The ALJ also noted that the CTS diagnosis should not be  
19 considered in the RFC assessment because Plaintiff did not allege  
20 the condition in her application or on appeal. (A.R. 23). It is  
21 unreasonable to infer solely from Plaintiff's failure to mention a  
22 CTS diagnosis in her benefits application that the condition did not  
23 hinder Plaintiff's ability to use her upper extremities. See  
24 Widmark v. Barnhart, 454 F.3d 1063, 1068 (9th Cir. 2006) (ALJ erred  
25 in not considering the functional limitations an injured thumb  
26 imposed on claimant solely because claimant failed to list the  
27 injury in his benefits application).

1           **B. Remand Is Warranted**

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3           The decision whether to remand for further proceedings or order

4 an immediate award of benefits is within the district court's

5 discretion. Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir.

6 2000). Where no useful purpose would be served by further

7 administrative proceedings, or where the record has been fully

8 developed, it is appropriate to exercise this discretion to direct

9 an immediate award of benefits. Id. at 1179 ("[T]he decision of

10 whether to remand for further proceedings turns upon the likely

11 utility of such proceedings."). However, where the circumstances of

12 the case suggest that further administrative review could remedy the

13 Commissioner's errors, remand is appropriate. McLeod v. Astrue, 640

14 F.3d 881, 888 (9th Cir. 2011); Harman, 211 F.3d at 1179-81.

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16           Here, the Court remands because the ALJ's analysis did not

17 properly address Dr. Huang and Dr. Yoon's concurring diagnoses

18 regarding plaintiff's upper extremity limitations and their effect

19 on Plaintiff's functional limitations prior to the DLI. The record

20 does not establish that the ALJ would necessarily be required to

21 find Plaintiff disabled if (1) Plaintiff's upper extremity

22 limitations were considered in the RFC assessment; (2) Dr. Yoon's

23 CTS diagnosis was given some weight; and (3) Dr. Huang's concurring

24 diagnosis was addressed. Remand is therefore appropriate.

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26           The Court has not reached issues not discussed supra except to

27 determine that reversal with a directive for the immediate payment

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1 of benefits would be inappropriate at this time.

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3 **VI. CONCLUSION**

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5 For the foregoing reasons, the decision of the Administrative  
6 Law Judge is VACATED, and the matter is REMANDED, without benefits,  
7 for further proceedings pursuant to Sentence 4 of 42 U.S.C. §  
8 405(g).

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10 LET JUDGMENT BE ENTERED ACCORDINGLY.

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12 Dated: October 3, 2016

13 \_\_\_\_\_/s/\_\_\_\_\_  
14 ALKA SAGAR  
15 UNITED STATES MAGISTRATE JUDGE  
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